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August 22, 2018 Arizona Corporation Commission

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Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Search Warrants; WS-02987A-18-0050

Dear Mr. Chairman,

You have asked to me examine whether the Arizona Corporation Commission has the authority to issue search warrants in connection with its investigation into billing, water, and wastewater issues at Johnson Utilities, LLC ("JU").

Arizona Revised Statute § 13-3912 is contained within the Arizona Criminal Code and identifies the grounds for issuing a search warrant. The statute provides as follows:

A search warrant may be issued upon any of the following grounds:

1. When the property to be seized was stolen or embezzled.
2. When the property or things to be seized were used as a means of committing a public offense.
3. When the property or things to be seized are in the possession of a person having the intent to use them as a means of committing a public offense or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing it being discovered.
4. When property or things to be seized consist of any item or constitute any evidence which tends to show that a particular public offense has been committed, or tends to show that a particular person has committed the public offense.
5. When the property is to be searched and inspected by an appropriate official in the interest of the public health, safety or welfare as part of an inspection program authorized by law.
6. When the person sought is the subject of an outstanding arrest warrant.

Subsection 5 is arguably the only section in A.R.S. § 13-3912 that could apply to the Commission's power to regulate public service corporations. The legislative history of that subsection along with Arizona case law, however, demonstrates that Subsection 5 was intended as a tool to assist the fire marshal in investigating arson. *See State v. Standsberry*, 114 Ariz. 351, 354-55 (App. 1976). As such, it is unlikely that the Commission has authority under A.R.S. § 13-3912(5) to issue a search warrant, because the investigation into JU does not involve the fire marshal investigating arson.

In addition, search warrants must be issued by a magistrate. A.R.S. § 13-3911. A "magistrate" is defined as "an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court." A.R.S. § 1-215(18). Commissioners is not included within the definition of a magistrate.

I am unaware of any other authority that would authorize the Commission to issue a search warrant under A.R.S. § 13-3912. To the extent the Commission's Securities Division has been involved in the issuance of search warrants in the past, those activities were limited to providing affidavits supporting probable cause and assisting the Arizona Attorney General's Office in the execution of those warrants related to criminal offenses. Accordingly, it is my opinion that the Commission does not have authority to unilaterally issue a search warrant under A.R.S. § 13-3912 related to the investigation into JU.

Respectfully,

A handwritten signature in black ink, appearing to be 'A. Kvesic', with a long horizontal stroke extending to the right.

Andy M. Kvesic
Chief Counsel & Legal Division Director

CERTIFICATE OF SERVICE

On this 22nd day of August, 2018, the foregoing document was filed with Docket Control as an Utilities Division Notice of Filing - Miscellaneous, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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